

AMENDED IN ASSEMBLY MARCH 27, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 39

**Introduced by Assembly ~~Member Runner~~ Members Runner,
Leslie, and Spitzer**

**(Coauthors: Assembly Members Aghazarian, Bates, Benoit, Bogh,
Cogdill, Cox, Daucher, Dutton, Harman, Haynes, Koretz,
La Malfa, La Suer, Maddox, Maze, Pacheco, Samuelian,
Strickland, and Wyland)**

**(Coauthors: Senators Ackerman, Battin, Denham, Hollingsworth,
Knight, and Margett)**

December 2, 2002

An act to amend Section 311.11 of the Penal Code, relating to child pornography.

LEGISLATIVE COUNSEL'S DIGEST

AB 39, as amended, Runner. Child pornography.

Existing law makes every person who knowingly possesses or controls any matter, representation of information, data, or image, the production of which involves the use of a person under ~~the~~ 18 years of age, knowing that the matter depicts a person under 18 years of age personally engaging in or simulating sexual conduct, as defined, guilty of a misdemeanor.

This bill would make this offense *involving the use of a person under 14 years of age punishable as a felony and would make this offense involving the use of a person ages 14 to 18 years of age punishable as a misdemeanor or a felony*. Because this bill would increase the penalty of a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 311.11 of the Penal Code is amended to
2 read:

3 311.11. (a) Every person who knowingly possesses or
4 controls any matter, representation of information, data, or image,
5 including, but not limited to, any film, filmstrip, photograph,
6 negative, slide, photocopy, videotape, video laser disc, computer
7 hardware, computer software, computer floppy disc, data storage
8 media, CD-ROM, or computer-generated equipment or any other
9 computer-generated image that contains or incorporates in any
10 manner, any film or filmstrip, the production of which involves the
11 use of a person under the age of 18 years, knowing that the matter
12 depicts a person under the age of 18 years personally engaging in
13 or simulating sexual conduct, as defined in subdivision (d) of
14 Section 311.4, is guilty of a public offense and shall be punished
15 either by imprisonment in the state prison, or by imprisonment in
16 the county jail for up to one year, or by a fine not exceeding two
17 thousand five hundred dollars (\$2,500), or by both the fine and
18 imprisonment.

19 (b) *Every person who knowingly possesses or controls any*
20 *matter, representation of information, data, or image, including,*
21 *but not limited to, any film, filmstrip, photograph, negative, slide,*
22 *photocopy, videotape, video laser disc, computer hardware,*
23 *computer software, computer floppy disc, data storage media,*
24 *CD-ROM, or computer-generated equipment or any other*
25 *computer-generated image that contains or incorporates in any*
26 *manner, any film or filmstrip, the production of which involves the*
27 *use of a person under the age of 14 years, knowing that the matter*
28 *depicts a person under the age of 14 years personally engaging in*



1 *or simulating sexual conduct, as defined in subdivision (d) of*
2 *Section 311.4, is guilty of a felony.*

3 (c) If a person has been previously convicted of a violation of
4 this section, or of a violation of subdivision (b) of Section 311.2,
5 or subdivision (b) of Section 311.4, he or she is guilty of a felony
6 and shall be punished by imprisonment for two, four, or six years.

7 ~~(e)~~

8 (d) It is not necessary to prove that the matter is obscene in
9 order to establish a violation of this section.

10 ~~(d)~~

11 (e) This section does not apply to drawings, figurines, statues,
12 or any film rated by the Motion Picture Association of America,
13 nor does it apply to live or recorded telephone messages when
14 transmitted, disseminated, or distributed as part of a commercial
15 transaction.

16 SEC. 2. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.

